

County Council of Cuyahoga County, Ohio

Ordinance No. O2014-0031

Sponsored by: Former County Executive FitzGerald/Department of Law Co-sponsored by: Councilmembers Simon and Miller	An Ordinance amending the County's Debarment Law to clarify that the period of debarment under Chapter 505 of the Cuyahoga County Code commences from the date of issuance of the debarment, and declaring the necessity that this Ordinance become immediately effective.
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WHEREAS, the County's debarment law was enacted to strengthen the citizens' trust in the County's contracting processes and to also provide risk mitigation;

WHEREAS, in light of recent rulings by the Debarment Review Board, it is necessary to amend the debarment law to clarify the commencement date for the debarment period under the County law commences from the date of issuance of the debarment; and

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of the County departments.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Section 505.10 of the Cuyahoga County Code is hereby amended and replaced in its entirety to read as follows:

Section 505.10 Commencement of Debarment Period and Good Faith in Exercising Discretion

A. Debarment Period to Commence from Date of Issuance of Debarment.

The debarment period for any debarment issued under this Chapter shall commence from the date of the Inspector General's issuance of the debarment and posting of the debarment on the Inspector General's web site.

B. Good Faith in Exercising Discretion.

The Cuyahoga County Inspector General and Debarment Review Board shall exercise their discretion in good faith to ensure consistent application of this Chapter.

SECTION 2. Section 205.06 (B) of the Cuyahoga County Code is hereby amended as follows (additions are bolded and underlined, deletions are stricken):

B. Jurisdiction

The Cuyahoga County Debarment Review Board shall review and determine – including the powers to affirm, reverse, modify, ~~and~~ or remand – any matters that are submitted for its consideration pursuant to the Cuyahoga County Code. **Notwithstanding Section 505.03 of this Code, the Board shall have the discretion to modify the expiration date of any individual debarment period as the Board deems appropriate; provided however that no single debarment period shall exceed five years.**

SECTION 3. Section 505.06(A)(2) of the Cuyahoga County Code is hereby amended as follows (additions are bolded and underlined, deletions are stricken):

A. Debarment by the Inspector General

2. Inspector General’s Decision on Debarment

- a. After expiration of the time period provided in the Notice of Potential Debarment in which the contractor may respond to the Notice of Potential Debarment, the Inspector General shall render a decision on the potential debarment within a reasonable time period under the circumstances.
- b. If the Inspector General determines not to debar the contractor, the Inspector General shall issue a written notice of his/her determination to the contractor.
- c. If the Inspector General determines to debar the contractor, the Inspector General shall do all of the following:
 - i. The Inspector General shall add the contractor on the listing of debarred contractors on its web site and shall issue a written “Notice of Debarment” to the Contractor.

- ii. The Notice of Debarment shall include all of the following:
 - i. A notice that the contractor has been debarred;
 - ii. A notice that the debarred contractor may not submit any bids, proposals, statements of qualifications, or any other such offers to the County or otherwise enter into any contract or agreement with the County;
 - iii. A notice that the debarred contractor may not do any work as a subcontractor on any county contract or agreement;
 - iv. A notice that the County will automatically disqualify any bids, proposals, statements of qualifications, or any other contractual offers to the County from the debarred contractor;
 - v. A notice of the duration of the debarment, including the starting and expiration dates of the debarment;
 - vi. A notice that the debarred contractor may appeal the debarment to the Debarment Review Board within 30 days by filing the original copy of its Notice of Appeal with the Inspector General and a copy with the Clerk of the Debarment Review Board;
 - vii. A notice of the exact due date on which the 30th day falls and by which the Notice of Appeal must be received by the Inspector General and the Clerk of the Debarment Review Board;
 - ~~viii. A notice that the Notice of Appeal must include, with sufficient detail and factual background the specific assignments of error upon which the debarred contractor seeks to rely in its appeal before the Debarment Review Board;~~
 - ix. A notice that the debarred contractor bears the burden of proof before the Debarment Review Board;
 - x. A notice that the debarred contractor has the right to introduce testimony and to cross-examine witnesses at the hearing before the Debarment Review Board;

- xi. A notice that if the debarred contractor intends to introduce evidence before the Debarment Review Board that was not submitted to the Inspector General, the debarred contractor must **submit, with sufficient detail and factual background, the specific assignments of error upon which the debarred contractor seeks to rely in its appeal before the Debarment Review Board, and must identify all such evidence with specificity and include copies of any written evidence within 30 days of filing its Notice of Appeal.** ~~in its Notice of Appeal~~ **The evidence submission deadline may be extended only at the discretion of the Debarment Review Board;**
- xii. A notice that the debarred contractor may not introduce any evidence at the hearing before the Debarment Review Board that was not submitted to the Inspector General in response to the Notice of Potential Debarment or included **by the evidence submission deadline** ~~with its Notice of Appeal~~ as provided in section 505.06(A)(2)(c)(**ii**)(xi) herein; and
- xiii. A notice that the debarred contractor's failure to file its Notice of Appeal as provided in the Notice of Debarment is a jurisdictional failure that may not otherwise be remedied.
- xiv. **A notice that the Inspector General shall, upon the request of the debarred contractor, produce copies of all written evidence the Inspector General reviewed when making his or her decision to debar, unless such production is otherwise prohibited by law.**

SECTION 4. It is necessary that this Ordinance become immediately effective for the usual daily operation of the County and the reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

SECTION 5. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Ms. Simon, seconded by Mr. Miller, the foregoing Ordinance was duly enacted.

Yeas: Simon, Greenspan, Miller, Germana, Jones, Brown, Hairston and Brady

Nays: None

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County Council President	Date
_____	_____
County Executive	Date
_____	_____
Clerk of Council	Date

First Reading/Referred to Committee: October 14, 2014

Committee(s) Assigned: Council Operations & Intergovernmental Relations

Additional Sponsorship Requested: March 31, 2015

Committee Report/Second Reading: April 14, 2015

Journal CC018

April 28, 2015